

## Internal Revenue Service

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Person To Contact:

Telephone Number:

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Date:  
July 25, 2013

### LEGEND:

X =

A =

Trust =  
1

Trust =  
2

State =

D1 =

D2 =

D3 =

D4 =

D5 =

Dear

This responds to a letter dated January 10, 2013, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated under the laws of State on D1, and elected to be an S corporation effective D1. A owned shares of X from D1 until A died on D2. On D3, following the administration of A's estate, A's estate distributed its shares of X to Trust 1 and Trust 2. During the two years between D3 and D4, Trust 1 and Trust 2 were eligible shareholders by reason of § 1361(c)(2)(A)(iii).

X represents that Trust 1 satisfies the requirements to be an electing small business trust ("ESBT") within the meaning of § 1361(e) effective D5. However, the trustee of Trust 1 did not make a timely ESBT election under § 1361(e)(3). Therefore, Trust 1 was not a permissible shareholder on D5 and thereafter.

X represents that Trust 2 satisfies the requirements to be a qualified subchapter S trust ("QSST") within the meaning of § 1361(d)(3) effective D5. However, the sole beneficiary of Trust 2 did not make a timely QSST election under § 1361(d)(2). Therefore, Trust 2 was not a permissible shareholder on D5 and thereafter.

X represents that the termination was not motivated by tax avoidance or retroactive tax planning. X further represents that from D5, X and its shareholders have filed all returns consistent with X's status as an S corporation. X and its shareholders have agreed to make any adjustments that the Commissioner may require, consistent with the treatment of X as an S corporation.

Section 1362(f) provides, in relevant part, that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents, or (B) was terminated under § 1362(d)(2) or (3); (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the event resulting in the ineffectiveness or termination, steps were taken (a) so that the corporation is a small business corporation, or (b) to acquire the required shareholders consents; and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election terminated on D5 because Trust 1 and Trust 2 were not eligible shareholders of X. We further conclude that the termination of X's S corporation election on D5 was inadvertent within the meaning of § 1362(f). Therefore, X will be

treated as an S corporation effective D5 and thereafter, provided X's S corporation election is not otherwise terminated under § 1362(d).

This ruling is conditioned upon on the trustee of Trust 1 filing an ESBT election and the beneficiary of Trust 2 filing a QSST election. Both elections should have an effective date of D5 and should be filed with the appropriate service center within 120 days of the date of this ruling. A copy of this letter should be attached to each election.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed regarding X's eligibility to be an S corporation or the validity of its S corporation election. No opinion is expressed as to whether Trust 1 qualifies as an ESBT, Trust 2 qualifies as a QSST, or whether any other shareholder of X is a permissible S corporation shareholder.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being forwarded to X's authorized representative.

Sincerely,

Bradford R. Poston  
Senior Counsel, Branch 2  
(Passthroughs & Special Industries)

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes